

**REMARKS/ARGUMENTS**

This paper is in response to the Office Action mailed August 7, 2008.

Claims 1-20 are pending in the application.

In the claims, Claim 17 has been canceled as it was somewhat redundant in light of the limitations of Claim 16. Claim 19 has been amended to enhance clarity.

The examiner has rejected Claims 16, 17, 19 and 20 under 35 U.S.C. 102(b) as being anticipated by Baird (US patent No. 5,709,049). Claims 16 and 20 are independent. Claim 17 has been canceled. Claim 19 depends from Claim 16.

To anticipate a claim, a reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). See generally, MPEP 2131.

Regarding Claim 16, Baird does not teach a water permeable tube attached to the underside of landscape fabric and adjacent to the edge of an opening in the fabric. The examiner points to Figs. 5 and 12 in Baird, however, Fig. 5 clearly shows the "irrigation hose or tube 100 mounted within the ring 34" and not attached to the underside of the membrane 86 (which the examiner presumably analogizes to the landscape fabric of the present invention). See Bair, col. 5, line 14. Nor does Fig. 5

show the tube 100 attached adjacent to the edge of the opening 88. Rather, the tube 100 is significantly spaced apart from the opening 88. In fact it is placed near the perimeter of the ground cover 20—about as far from adjacent as possible. Fig. 12 shows an irrigation hose 200 attached to the end walls 188 and side walls 182 of the ground covering enclosure 180, and not attached to the underside of the membrane 190. See Baird, col. 7, lines 12, 13, 42-51. Nor is the hose 200 shown adjacent an opening in the membrane 190. As shown in Fig. 13, the hose 200 is mounted significantly below the membrane and opening—spaced apart from, not adjacent to.

To anticipate, the reference “must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed.Cir.2008) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed.Cir.1983)). Baird does not disclose the invention as claimed in Claim 16 and in fact teaches away from the invention with respect to placement and attachment of a water permeable tube. The rejection of Claim 16 for anticipation by Baird is unsupported and Claim 16 should be allowed.

Claim 19 recites, in part, openings in the landscape fabric partially defined by respective portions of a water-permeable tube. The openings in the membrane 86, 190 shown and described in Baird are not defined, partially or otherwise, by any water-permeable tube or hose, namely because Baird consistently shows irrigation tubes or hoses 100, 200 mounted away from—spaced apart from—such openings.

Claim 20 recites, in part, the step of providing an opaque vapor-permeable sheet having weighted outer edges of sufficient flexibility to conform to the surface of the ground. The examiner cites Baird, col. 2, lines 1-2 and col. 7, lines 45-47 as disclosing an opaque vapor-permeable sheet having weighted outer edges. Neither citation contains any reference to weighted edges, and col. 2, lines 1-2 actually discloses a membrane that is water and light pervious! Not only does the citation not disclose the referenced elements from Claim 20, it appears to teach away from opacity. Applicant notes that at col. 4, lines 40-42, Baird describes a weed cloth as opaque but also states that porosity can be determined by holding the it up to the light. In other words, the patentee has apparently redefined the term “opaque” as pervious to light.

The examiner cites Bair, col. 4, line 41 and col. 2, lines 4-7 as disclosing a weighted outer edge of sufficient flexibility to conform to the surface of the ground. The patent on or about line 41 does not appear to reference outer edges, weighted or otherwise, but rather describes characteristics of the membrane. At and about col. 2, lines 4-7 the patent discloses that the cover of Baird includes a heat-absorbing wall—the present invention lies in conformance with the ground and has no wall—that is maintained by its inherent weight in engagement with the ground.

Note again that Claim 20 recites: “weighted outer edges of sufficient flexibility to conform to the surface of the ground...” The applicant wishes to point out certain limitations in the claim language. First, the outer edges must be weighted, not merely have weight—all things have weight. They must be weighted and specification

discloses several embodiments of weighted edges including pockets in the edges holding metal, rubber, plastic or sand.

More specifically, the claim calls for weighted outer edges of sufficient flexibility to conform to the surface of the ground. Returning to the cited disclosure of Baird, the wall is maintained by its inherent weight—it is not weighted!—in engagement with the ground. The wall in Baird is merely in engagement with the ground. To be in engagement with the ground does not anticipate being of sufficient flexibility to conform to the surface of the ground. A bridge is in engagement with the ground, on either end. But it could hardly be said to conform to the surface of the ground.

As with Claim 1, the examiner asserts that Baird discloses attaching a fluid permeable conduit to the underside of a sheet, as claimed in the present application. As pointed out above, the devices shown and described in Baird do not include conduits attached to the membrane or sheet at all, let alone to the underside. Rather, the patent discloses attaching irrigation tubes to the wall structures that form the perimeter of each disclosed device. The disclosure of Baird does not anticipate the elements of Claim 20 and indeed teaches away from the claim in several respects.

The examiner has rejected Claims 1, 2, 5 and 6 under 35 U.S.C. 103(a) as being unpatentable over Smith (US patent No. 3,955,319) in view of Frydryk (US patent No. 4,044,501) and Chapin (US patent No. 3,361,359). Claim 1 is independent. Claims 2, 5 and 6 depend from Claim 1. Smith merely discloses slits in vapor-permeable material that may, or may not, form flaps, and that such material may be weighted down

with—apparently from the cited figures in Smith—stones or rocks. In other words, Smith does not disclose devices with reinforced, weighted outer edges as called for in the claims, but rather a device so deficient in this regard that it must be held in place with rocks. Frydryk discloses a fabric cover with reinforced edges but does not appear to disclose a device with weighted edges.

The examiner states that a permeable hose disclosed by Chapin would be able to be threaded through a tube formed by Smith—apparently implying that Smith discloses the tubes of the present invention formed by folding over and securing flaps of sheet material cut to create plant openings. Smith discloses nothing of the kind, neither tubes for holding hoses nor tubes formed from flaps—elements which provide significant advantages to certain embodiments of the present invention in terms of ease of manufacture and advantageous placement of water-permeable hoses.

The examiner maintains that the limitation of “said flap folded back upon the underside of said sheet to form a tube” should be considered an intended use. It is not an intended use, but a series of structural limitations. Smith, Frydryk and Chapin do not disclose, and cannot be combined to anticipate, the limitations of Claim 1.

The examiner has also rejected Claim 1 as being unpatentable over Baird under 35 U.S.C. 103(a). The arguments above apply: Baird does not disclose or render obvious a sheet with an opening formed from a flap cut from the sheet, with the flap folded back upon the sheet to form a tube for securing a hose adjacent the opening. Neither does it disclose or render obvious means for weighting reinforced outer edges to

substantially conform to the surface of the ground.

The examiner has rejected Claims 3, 4, and 7-15 under 35 U.S.C. 103(a) as being unpatentable over Baird. With particular reference to Claim 10, Baird does not disclose or render obvious means for weighting reinforced outer edges with any of the elements recited in the claim, namely, metal bars, metal tubes, rubber bars, rubber tubes, plastic bars, plastic tubes, metal cable, rope or sand. The examiner merely cites Baird at col. 7, lines 30-31 for support of this rejection. The cited text discloses “side and end walls,” emphasis added, “made from the recycled rubber of used tires.” Side and end walls made of rubber tires are not analogous to reinforced outer edges weighted to substantially conform to the surface of the ground, merely because rubber may be a selected material used for weighting the edges of the claimed invention. Note that rubber tires are specifically designed to maintain structural integrity and shape, not to conform (take the shape of) ground surfaces. One skilled in the art would know that a rubber tire lying upon the ground will bridge surface deformations and not conform.

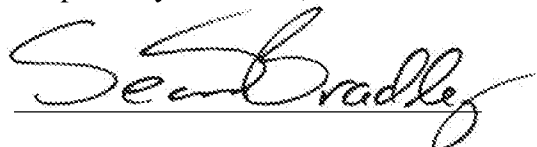
With regard to Claim 11, the patentee has defined opaque to include light pervious and the disclosure teaches away from the present invention. With regard to Claim 12, the examiner states that Baird discloses “one or more solid weights attached about the periphery” of a sheet “the weights having sufficient flexibility to substantially conform the periphery to the surface of the ground.” The patent surely does not provide such disclosure at the citation in the Office Action, Baird, col. 2, lines 4-7, nor was any disclosure remotely resembling the above located elsewhere in the patent.

With regard to Claim 13, the examiner states that Baird discloses a means for restricting the flow of fluid through a tube and cites reference numeral 108 shown in Fig. 2. Reference numeral 108 does not refer to a means for restricting fluid flow. As stated in col. 5, line 21, reference numeral 108 refers to a coupling for joining a hose to a main line. The examiner further alleges that reference numeral 108 points to a conical flow restrictor, as recited in Claim 15. Applicant can find no support for this allegation as the patent clearly uses reference numeral 108 to identify a coupling and no conical flow restrictor is shown or described in Baird.

The examiner has rejected Claim 18 under 35 U.S.C. 103(a) as being unpatentable over Baird in light of Odenkirk (US patent No. 3,029,558). Odenkirk discloses a water jack that surrounds a blanket for fumigating soil. Odenkirk discloses art that is not relevant to the garden week barrier of the present invention and, as with Baird, discloses placement of water conduit about the periphery of the device rather than at the edge of plant openings.

In view of the above amendments and remarks it is respectfully requested that a timely Notice of Allowance be issued in this case. In the event that the Examiner is of the opinion that the prosecution of this application can be advanced thereby, she is encouraged to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,

  
Sean Bradley

Sean T. Bradley  
P.O. Reg. No. 46,572

Erickson, Kernell, Derusseau &  
Kleypas, LLC  
800 W. 47th Street, Suite 401  
Kansas City, Missouri 64112  
Phone: (816) 753-6777

Attorneys for the Applicant